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Rochester, N.Y., Thursday, February 25, 1993

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The Daily Record

Monroe County's Business/Legal Daily Newspaper

Today's Quotation

"If you are to stand up FOR your Government, you must be able to stand up TO your Government."
—Sir Harold Caccia

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Gay Alliance Challenges City, Wins Property-Tax Exemption

State Supreme Court, Siracuse, J.

STATE SUPREME Court, County of Monroe.

Gay Alliance of Genesee Valley, Inc., Plaintiff, v. City Assessor, City of Rochester, N.Y., Defendant. Index No. 8872/91.

DATED: Feb. 19, 1993.

APPEARANCES: Ellen M. Yacknin, Esq. (with Susan Ann Silverstein, Esq.), Attorneys for plaintiff Gay Alliance of Genesee Valley, Inc., 80 Highland Ave., Rochester; Louis N. Kash, Corporation counsel (Susan L. Hauser, Municipal Attorney, of counsel), Attorney for defendant City Assessor, City of Rochester.

DECISION

BEFORE: Andrew V. Siracuse, J.

PLAINTIFF Gay Alliance of Genesee Valley ("GAGV") has challenged the denial of its application for a real property-tax exemption (Real Property Tax Law §420-a).

The sole issue before the court at this time is its motion under CPLR 3025(b) for leave to add a cause of action alleging that this denial violated GAGV's constitutional rights (42 USC §1983).

In light of New York's strong legislative and judicial policy of liberality in allowing such leave, plaintiff's motion is granted.

GAGV STATES that the additional cause of action can be determined on the same factual material as has already been submitted, and concedes that its sole reason for adding the Federal claim is its hope of recovering attorney's fees, allowed by 42 USC §1988.

The City agrees that no further factual submissions are necessary. Thus, there appears to be no prejudice to the City in permitting the amendment, and precedent binding on this court and recently reiterated holds that

[a]bsent prejudice or surprise, leave to amend shall be freely granted (Newton v Aqua Flo Co., 106 AD2d 919, 920).

Furthermore,

Upon consideration of the motion, Special Term should not examine the merits or legal sufficiency of the proposed amendment unless the proposed pleading is clearly and patently insufficient on its face (Newton v Aqua Flo Co., supra; see also, Kusak v Allstate Ins. Co. — AD2d —, decided February 5, 1993, case 1678/92 [4th Dept]).

THE CITY'S papers raise two objections to the amendment. One, that the facts do not show discrimination because GAGV allegedly does not qualify for an exemption, addresses the merits of the action as a whole rather than the facial sufficiency of the amended pleading.

The second, that municipalities can be

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Administrative Order for Courts

Family Court Rules Are Amended

NEW YORK — Pursuant to the authority vested in me, and with the advice and consent of the Administrative Board of the Courts, I hereby amend, effective immediately, Section 205.5 of the Uniform Rules for the Family Court, [22 NYCRR],

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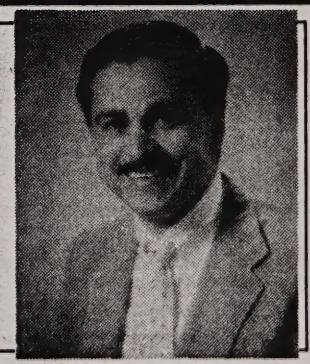
NEW YORK DWI

BY EDWARD L. FIANDACH

...Catch-Up



LATE 1992 SAW a flurry of decisions in the area of alcohol-influenced operating

AUTHOR: Edward L. Fiandach is a 1975 graduate of St. John Fisher College, and a 1978 graduate of Al-

ar post, Kaye, of Manhattan, seven-member Court of Ap- ork's top tribunal, and over- s court system

oresee any problem," said e, a spokesman for Senate der Ralph Marino.

F judge's job has been va- ovember, when Republican resigned after federal au- ged he had harassed an ex- l threatened to kidnap her ghter. Wachtler pleaded in- ek to the charges.

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partner attorney in a law firm. See ABA 90-357 (1990) and ABA 84-351 (1984).

The public would in all likelihood be confused by use of the term "Legal Associate" if listed as a paralegal's only title.

The term "Public Benefits Specialist" also presents the likelihood of confusion. DR 2-105(B) allows an attorney to hold himself out as a specialist in a particular area of the law, if he or she has been so certified by an authority with jurisdiction under New York law under the subject of

4 (1985) (BNA 801:3820); Texas Op. 403 (undated) (BNA 801:8302).

2. Although the opinion was based on the predecessors of the existing DR 2-101 and DR 2-102, there is no significant change in the current provisions that would lead to a different result.
3. The terms "Staff Investigator," "Office Manager" and "Secretary" were there authorized for use by a nonlawyer for inclusion on a firm's letterhead, but the term "Executive Director" was found to be ambiguous and therefore prohibited unless the letterhead, business card or other listing makes it clear that either the person is a nonlawyer or is responsible only for the administration of the law office and is not responsible for the professional practice.

Letters to the Editor

Death Penalty via Citizens' Participation

THE CHIEF SPONSORS of this state's death-penalty bill have indicated that, in the coming weeks, they will once again be looking for Senate and Assembly approval of the measure — which enjoys widespread support from New Yorkers.

Unfortunately, for the vast number of state residents who support capital punishment, the legislature's annual debate on this issue has taken (in the words of baseball great Yogi Berra) a "deja vu all over again" tenor.

FOR THE PAST 18 years, the legislature has approved capital-punishment legislation, only to see Governor Cuomo and before him Governor Carey, veto the measure. Subsequent veto override attempts, which require a two-thirds vote in both the Senate and Assembly, have fallen short.

So while the good news is that the bill sponsors, most notably Sen. Dale Volker, are not giving up on the proposal as witnessed by their attempt to win legislative approval, the bill will ultimately be vetoed.

However, movement is now afoot to enact a death penalty through citizen participation. Under the proposal, the State Constitution would be amended to allow judges and juries to impose death sentences in capital cases.

IN ORDER TO amend the constitution, two successively-elected state legislatures must approve an identical death-penalty statute, and voters must then approve the measure by statewide ballot.

The best part about this proposal is that the governor would be bypassed and the fate of capital punishment would be placed directly into the hands of state residents, where it rightly belongs.

It's clear that the legislature, and New Yorkers want the death penalty back. A constitutional amendment change would make it a reality.

Jerry Johnson,
N.Y. State Assemblyman,
136th District

Wins Property-Tax Exemption

From page 1

held liable under 42 USC §1983 only for acts pursuant to official policy or custom, is simply wrong, and rests on a discussion of case law so selective as to be misleading. **Monell v New York City Dept. of Social Services** (436 US 658), the sole case cited, explicitly declined to set out the boundaries of municipal liability, and it is clear from subsequent cases that they may be liable for acts pursuant to policy or custom or for single acts "by the highest officials responsible for setting policy in that area of the government's business" (**City of St. Louis v Praprotnik**, 485 US 112, 123).

AS THE CITY Assessor is charged with determining applicants' entitlement to property-tax exemptions, his rejection of GAGV's application might well subject the City to liability if found to be discriminatory.

At oral argument the City raised a further objection, claiming that the Board of Assessment Review should have been sued instead of the assessor.

THIS ARGUMENT does not address the merits of the pleading but is, in effect, a jurisdictional objection based on a failure to name necessary parties (CPLR 1001, 1003).

It is not necessary to speak to the merits of this claim.

IT IS WORTH noting, though, that this court has authority to add parties on its own initiative (CPLR 1003); in view of the thorough defense mounted by the City there would be no prejudice in adding the Board at this stage in the action. The error, if any, would be a technical one at best.

The motion is granted, with costs.

GETS 2 DESIGNATIONS

WILLIAM R. MONTE, CFP, of the Essex Investment Group, has received the Charter Financial Consultant (ChFC) and Certified Life Underwriter (CLU) professional designations from the College for Financial Planning and the American College.